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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: BUFFALO, NEW YORK Date: MAY 19 2010

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under former Sections 321 and 322 of the Immigration and Nationality Act; 8 U.S.C. §§ 1432, 1433 (1982).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Buffalo Field Office Director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record shows that the applicant was born on March 31, 1965 in Pakistan. The applicant's parents, [redacted] and [redacted] were married in 1964. The applicant was admitted to the United States as a lawful permanent resident on September 11, 1977, at the age of 12. The applicant's father became a U.S. citizen upon his naturalization on January 5, 1982 when the applicant was 16 years old. The applicant seeks a certificate of citizenship under former sections 321 and 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, 1433 (1982), claiming that he derived citizenship through his father.

The field office director determined that the applicant did not qualify for citizenship under former section 321 of the Act because his mother had not naturalized. The field office director further determined that the applicant could not derive citizenship through his father under former section 322 of the Act because he was over 18.

On appeal, the applicant concedes that he is unable to derive citizenship under former section 321 of the Act, but asserts that he should be granted citizenship *nunc pro tunc* under former section 322 of the Act because he was under 18 when his father naturalized and he only failed to obtain a certificate of citizenship due to processing delays and the error of his father's attorney. The applicant's claims and the evidence submitted on appeal fail to establish his eligibility for citizenship.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3rd Cir. 2005). Former sections 321 and 322 of the Act, as in effect in 1982 when the applicant's father naturalized, are therefore applicable to this case.[1]

Former section 321(a) of the Act provided, in pertinent part, that:

> A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:
>
> (1) The naturalization of both parents; or
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> (2) The naturalization of the surviving parent if one of the parents is deceased; or

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[1] The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

> (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out-of-wedlock and the paternity of the child has not been established by legitimation; and if –
>
> (4) Such naturalization takes place while such child is under the age of eighteen years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection or the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

The record in this case shows that the applicant was born in wedlock and that his mother entered the United States as a lawful permanent resident in 1977, but has not naturalized. The record contains no indication that the applicant's mother is deceased or that the applicant's parents legally separated. Accordingly, the applicant does not meet the requirements set forth in sections 321(a)(1), (2) and (3) because only his father naturalized. Consequently, the applicant did not derive citizenship through his father under former section 321(a) of the Act.

The applicant also did not derive citizenship under former section 322 of the Act, which stated, in pertinent part:

> (a) Application of citizen parents; requirements
>
> A parent who is a citizen of the United States may apply to the Attorney General for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General that the following conditions have been fulfilled:
>
> (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
> (2) The child is physically present in the United States pursuant to a lawful admission.
> (3) The child is under the age of 18 years and in the legal custody of the citizen parent.
>
> . . .
>
> (b) Attainment of citizenship status; receipt of certificate
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> Upon approval of the application (which may be filed abroad) and . . . upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

A child could not derive citizenship under former section 322 of the Act unless the child's application was approved and the child took the oath of allegiance before he or she turned 18. Former section 322(a)(3), (b) of the Act. In this case, the applicant met neither requirement before he was 18.

The record also does not establish that the applicant's father ever filed an application for a certificate of citizenship on the applicant's behalf. On appeal, the applicant submits an affidavit from his father in which his father states that he first applied for naturalization in 1980 on behalf of himself and his children (the applicant and four of his siblings), reapplied in 1981 when he was told his application could not be located and finally filed a third application through an attorney on September 11, 1981. *Affidavit of* [redacted] dated March 22, 2010. The applicant's father asserts that the "attorney failed to complete the section indicating my desire for the issuing of certificate[s] of citizenship for each of my children." *Id.* U.S. Citizenship and Immigration Services (USCIS) records contain the applicant's father's application to file a petition for naturalization, which the applicant's father signed on October 15, 1981. Part 34 of the application states: "I do not want certificates of citizenship for those of my children who are in the U.S. and are under age 18 years." The section entitled "Signature of person preparing form, if other than applicant" is marked "N/A [not applicable]." The record contains no indication that the applicant's father was represented by an attorney until after his naturalization application was filed. Accordingly, the record does not support the applicant's claim that his father's failure to request a certificate of citizenship for him was due to his attorney's error.

In his February 20, 2010 statement, the applicant also asserted that after his father naturalized, he and his siblings received a letter from the former Immigration and Naturalization Service instructing them to surrender their permanent resident cards in exchange for their certificates of citizenship. He stated that his three youngest siblings surrendered their cards and received their certificates in 1983 and that his fourth youngest sibling surrendered her card and received her certificate in 1992. *Statement of the Applicant,* dated Feb. 20, 2010. Again, the record does not support the applicant's assertions. USCIS records show that one of the applicant's sisters obtained her naturalization certificate in 1987, a second sister obtained her certificate in 1988 and a third sister and his brother obtained their certificates in 1992. Regardless of the dates they obtained their certificates, each of the applicant's four siblings were naturalized under section 316 of the Act, 8 U.S.C. § 1427, pursuant to their own naturalization applications and completion of the naturalization process when they were over the age of 18. None of the applicant's siblings derived citizenship upon their father's naturalization in 1982. Indeed, the applicant concedes that he "never surrendered [his lawful permanent resident] card as instructed" and did not further pursue his claim to citizenship until he filed the instant application on February 25, 2010.

Even if the applicant's assertions regarding the delays in his father's naturalization and his own application were true, the AAO is without authority to apply the doctrine of equitable estoppel to approve an application for derivative citizenship *nunc pro tunc*. The AAO, like the Board of Immigration Appeals, is "without authority to apply the doctrine of equitable estoppel against the Service so as to preclude it from undertaking a lawful course of action that it is empowered to pursue by statute and regulation." *Matter of Hernandez-Puente,* 20 I&N Dec. 335, 338 (BIA 1991). The jurisdiction of the AAO is limited to that authority specifically granted through the regulations at Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments.

The record contains no evidence that the applicant's father filed an application for a certificate of citizenship on the applicant's behalf; that the application was approved and that the applicant took

the oath of allegiance prior to his eighteenth birthday. Accordingly, the applicant is ineligible for a certificate of citizenship under former section 322 of the Act.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). In this case, the applicant has failed to establish that he meets the requirements to derive citizenship through his father under former sections 321 or 322 of the Act.

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in the present case has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.